IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHELLE REID, on behalf of her daughter, SHANELLE REID, a minor	:	**CIVIL ACTION**
v.	:	
	:	
SCHOOL DISTRICT OF PHILADELPHIA, and	:	
GREGORY SHANNON, PRINCIPAL, BENJAMIN FRANKLIN ELEMENTARY SCHOOL	:	**NO. 03-1742**

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J. **August 27, 2004**

Plaintiff Michelle Reid brings this action on behalf of her 15-year-old daughter, Shanelle Reid, who has been diagnosed with "mild mental retardation" and attention deficit hyperactivity disorder ("ADHD"). The Reids, filing this action in March 2003, alleged six counts against the defendants, the School District of Philadelphia ("School District") and Gregory Shannon, Principal of the Benjamin Franklin Elementary School ("Franklin Elementary"). By Order dated February 13, 2004, Counts I (42 U.S.C. § 1983 and IDEA) and II (Rehabilitation Act) were severed from the remaining counts and tried non-jury; Counts III (14th Amendment Equal Protection), IV (Fourteenth Amendment Due Process) and V (Americans with Disabilities Act) were stayed pending the outcome of trial, and Count VI (State law claims) was dismissed. In accordance with Fed. R. Civ. P. 52(a), the following are findings of fact and conclusions of law with respect to Counts I (42 U.S.C. § 1983 and IDEA) and II (Rehabilitation Act):

I. Findings of Fact

1. Plaintiff Michelle Reid is the natural mother of Shanelle Reid.

2. Shanelle Reid is 15 years old and is currently enrolled in the 10th grade at Murrell Dobbins Area Vocational-Technical High School in the Cosmetology Shop Program; it prepares students to take the Pennsylvania State Board of Cosmetology examinations in 12th grade, after completing 1250 hours of training.

3. Defendant Gregory Shannon is the Principal of Franklin Elementary.

4. Shanelle Reid was not identified as a child in need of a special education at any time during the third, fourth, fifth or sixth grades.

5. When Shanelle attended Franklin Elementary in the seventh grade, she failed all major subjects and was recommended for retention.

6. Shanelle attended summer school, passed summer school, and was promoted to 8th Grade.

7. In 8th Grade at Franklin Elementary, Shanelle's Final Report grades were all Ds.

8. Michelle Reid made verbal requests to Ms. Solomon, the Special Education Coordinator for Franklin Elementary that Shanelle be evaluated for Special Education.

9. Michelle Reid spoke to Defendant Gregory Shannon about testing Shanelle, and he told her that Shanelle should not be

tested because it would go on her record.

10. Michelle Reid made a written request to have Shanelle evaluated in January 2002.

11. On March 18, 2002, Michelle Reid signed a Permission to Evaluate Form and expressly requested that the evaluation take place before May 2002.

12. On March 22, 2002, Michelle Reid took Shanelle to Dr. Joseph Girone for a private evaluation.

13. Dr. Girone reported Shanelle Reid had an IQ of 65; his report was sent to the School District on April 9, 2002.

14. The School District arranged for a psycho-educational evaluation, conducted by Andrea Mahon, M.Ed., certified school psychologist, on April 30, 2002, and May 7, 2002.

15. The psycho-educational evaluation showed that Shanelle Reid, “met the criteria for special education as a student with mild mental retardation;” Shanelle’s academic skills were equivalent to the following grade levels: Reading, 3.6; Spelling, 2.5; Math, 3.3; and Word Recognition, 3.2; Shanelle’s socialization skills were found to be below average compared to her peers.

16. Shanelle’s Individualized Education Program(“I.E.P.”) was completed June 5, 2002, with services to begin September 3, 2002.

17. Michelle Reid did not believe the I.E.P. was sufficient to meet Shanelle’s needs and requested a due process hearing in

August 2002.

18. The due process hearing was scheduled for September 25, 2002.

19. On the day of the hearing, a Settlement Agreement between Michelle Reid and the School District provided:(1) an IEP review would be held on or before November 15, 2002; (2) Shanelle would be accepted in the Cosmetology Program at Dobbins High School in 10th grade; (3) Shanelle would receive individual tutoring three hours a week in 9th grade, tutoring by a teacher at Dobbins in 10th grade, summer programs in 2003 and 2004; (4) 200 hours of compensatory education either after school, on weekends, or during the summer until age 18; the compensatory education would include provision of a computer and software; and (5) payment of the Reids' attorneys fees.

20. The I.E.P. review was not held on or before November 15, 2002.

21. A due process hearing was requested by the Reids and scheduled for February 19, 2003 (postponed to April 9).

22. The individual tutoring for the 2002-2003 school year did not begin until March 24, 2003; Stewart Schwartz provided 18 tutoring sessions through May 2003.

23. The Reids were not provided a computer until April 21, 2003.

24. The cost of the desktop computer equipment (not including the scanner) was $1,389.70 and was credited as 41.4

hours of compensatory education.

25. On May 12, 2003, the Reids and the School District entered a Supplemental Settlement Agreement providing: (1) an additional 30 hours of compensatory education for Shanelle (a total of 230 hours) as an adjustment for delay in complying with the September 2002 Agreement; (2) 108 hours of tutoring by a teacher after school and during the summer (of the school year 2003-2004);(3) a CD/DVD burner and educational software.

26. Shanelle's IEP was not reviewed at Olney High School in June 2003.

27. When she began 10th grade in September 2003, Shanelle was enrolled in the Cosmetology Shop Program at Dobbins High School.

28. The School District has provided the equivalent of 55.8 hours compensatory education under the Supplemental Settlement Agreement:

Computer:	41.4 hours
Cosmetology Kit:	6.9
Summer 2003 tutoring	7.5
Total:	55.8 hours[1]

29. The School District must still provide Shanelle 174.2 hours of compensatory education under the Settlement Agreements. The Supplemental Settlement Agreement also requires an 108 hours of tutoring not yet provided.

[1]These figures were provided by the school district and unchallenged by the plaintiff. The computer, which cost $1389.70, equals $33.80/hour, and the supplies, which cost $341, equal $49.42/hour.

30. By the terms of the Agreements, the School District has until Shanelle's 18th birthday in December 2006 to complete the compensatory education.

II. DISCUSSION

Count I

The Individuals with Disabilities Education Act ("I.D.E.A."), 20 U.S.C. § 1400 et seq., requires states accepting federal funding for the education of disabled children to insure that those children receive a "free and appropriate education." 20 U.S.C. § 1415(a).

Section 1983 provides a civil remedy for acts taken under color of law depriving "any citizen of the United States or person within the jurisdiction thereof" of "rights, privileges, or immunities secured by the Constitution and laws." 42 U.S.C. § 1983. Section 1983 may provide redress for violations of federal laws that do not by their own terms create a cause of action or a direct remedy.

To establish a valid claim under § 1983, plaintiff must show that the defendants, while acting under color of state law, deprived her of a right secured by the Constitution or the laws of the United States. See Anderson v. Davila, 125 F.3d 148, 159 (3d Cir. 1997); Mark v. Borough of Hatboro, 51 F.3d 1137, 1141 (3d Cir. 1995). Plaintiff alleges a violation of the rights secured to her by IDEA.

For purposes of §1983, a school district is treated as a

municipality and is subject to liability under Monell v. Department of Social Servs., 436 U.S. 658 (1978). See Collins v. Chichester School Dist., Civ. No. 96-6039, 1997 WL 411205, at *2 (E.D. Pa. July 22, 1997).

In Monell, the Supreme Court held that §1983 liability attaches to a municipality when a municipal official, acting with the necessary policy-making authority and with deliberate indifference to the rights of individuals establishes or knows of and acquiesces in a policy, practice or custom depriving individuals of constitutional or statutory rights.

For defendants to be held responsible for the deprivation of a constitutional or statutory right, a municipal policy, practice or custom must cause the deprivation. See, Monell at 690-91, 694. A custom may be identified through "a course of conduct...when, though not authorized by law, 'such practices of state officials [are] so permanent and well settled' as to virtually constitute law." Andrews v. Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990).

The School District had a policy of implementing the provisions of the IDEA act,[2] but the District's practice did not

[2]Pennsylvania fulfills its IDEA obligations, including its "child find" obligations, through a statutory and regulatory scheme codified at 22 Pa. Code Chapters 14 and 15. 22 Pa. Code § 342.22(c) (reserved June, 2001). Pennsylvania law also described procedures for schools to follow when parents request an evaluation of their child:

> Parents who suspect that their child is exceptional may request a multidisciplinary evaluation of their child at any

comply with the policy. Shanelle was evaluated and determined to need special educational services only because of the relentless demands of Michelle Reid. Despite Shanelle's failing all subjects in seventh grade, the School District did not refer her to the Comprehensive Student Assistance Program. Michelle Reid made numerous oral and written requests to have Shanelle evaluated during seventh and eighth grades, but she was not evaluated until the end of eight grade.

The Reids entered into two Settlement Agreements with the School District. The School District has not fully complied with either agreement. The School District has until Shanelle's 18th birthday in December 2006, to provide all the compensatory education promised, but the District has nevertheless unreasonably delayed providing services to Shanelle. After-school tutoring that was to begin in September 2002, did not begin until March 2003. A computer was not provided until 6 months after the first settlement agreement.

Non-compliance with the governing settlement agreements constitutes a denial of a free and appropriate education. Under 42 U.S.C. § 1983 a district court may fashion a remedy for IDEA

> time. The request shall be in writing. If a parental request is made orally to school personnel, the personnel shall inform the parents that the request shall be made in writing and shall provide the parents with a form for that purpose.

22 Pa. Code § 14.25(b) (reserved June, 2001) Alex K. v. Wissahickon Sch. Dist., 2004 U.S. Dist. LEXIS 1994, 15-17 (E.D. Pa. 2004).

violations including monetary damages. W.B. v. Matula, 67 F.3d 484, 495 (3d Cir. 1995). Monetary damages are appropriate when compensatory education alone will not make the plaintiff whole.

The School District failed to provide the compensatory education promised to Shanelle in the first Settlement Agreement and the Supplemental Settlement Agreement. At the time of trial, the School District still had to provide Shanelle Reid with 174.2 hours of compensatory education. Although the court could award more compensatory education, it has seen no reports of the effectiveness of the compensatory education. Ms. Reid has had difficulty coordinating the delivery of the compensatory services and is unable to cope with the burden of the School District bureaucracy. The court is left unconvinced that more compensatory education will make Shanelle whole.

The court will retain jurisdiction to ensure Shanelle is provided all of the compensatory education promised. In addition, the court will award monetary damages in the amount of $10,000 to fund an educational advocate help the Reids make the most of the compensatory education and other related services. If all of the money is not used for an advocate, the remainder may be useful in helping Shanelle establish her cosmetology career.

Plaintiff failed to prove Defendant Gregory Shannon was deliberately indifferent, so he is not personally liable under 42 U.S.C. § 1983.

Count II

Plaintiff also failed to prove she was excluded from any school activities available to all students or that she was treated differently by School District officials because of her disability. Defendants are entitled to judgment in their favor or Count II of the Amended Complaint (alleged violation of Rehabilitation Act, Section 504).

III. CONCLUSIONS OF LAW

1. There is jurisdiction over the subject matter of this action and over the parties.

2. Under the Individuals with Disabilities Education Act ("IDEA"), school districts are charged with ensuring that "[a]ll children with disabilities...regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated...." 20 U.S.C. 1412(a)(3)(A); see also 34 C.F.R. § 300.125; 22 Pa. Code § 14.121. This is known as the "child find" obligation.

3. Children who are suspected of having a qualifying disability must be identified and evaluated within a reasonable time after school officials are on notice of behavior that is likely to indicate a disability. Ridgewood Bd. of Educ. v. N.E. for M.E., 172 F.3d 238, 253 (3d Cir. 1999).

4. The School District failed to identify and evaluate Shanelle as a child in need of special education and related services at the end of 7th grade. The School District did not

initiate an evaluation of Shanelle despite her having failed all grades.

5. The School District failed to identify Shanelle under its I.D.E.A. "child find" obligations and its own comprehensive support assistance process.

6. The September 25, 2002 and May 12, 2003 Settlement Agreements are valid and binding and terminated all of the Reid's claims against the School District under I.D.E.A. prior to the Settlement Agreements.

7. The School District failed to comply with the September 25, 2002 and May 12, 2003 Settlement Agreements. Shanelle was to receive tutoring beginning in September 2002; this tutoring did not commence until February 2003. There was a five-month delay because of an alleged lack of personnel to provide instruction. The School District still must provide Shanelle with tutoring.

8. The School District has not provided Shanelle a free and appropriate education ("F.A.P.E.").

9. Plaintiff is entitled to judgment in her favor and against the School District on Count I for the IDEA violations.

10. The court may award compensatory education upon a finding that a student has not received an appropriate education or that an IEP was inappropriate. M.C. ex rel. J.C. v. Central Regional Sch. Dist., 81 F.3d 389, 397 (3d Cir. 1996); Carlisle Area Sch. v. Scott P. by & Through Bess P., 62 F.3d 520, 537 (3d Cir. 1995).

11. Under 42 U.S.C. § 1983, the court may fashion a remedy for IDEA violations that includes monetary damages. W.B. v. Matula, 67 F.3d 484, 495 (3d Cir. 1995). Monetary damages are appropriate when no amount of compensatory education will make the plaintiff whole.

12. Shanelle Reid is entitled to $10,000 in monetary damages for the IDEA violations, as compensatory education alone will not make her whole.

13. This court will retain jurisdiction to ensure compliance under both the September 25, 2002 Settlement Agreement and the May 12, 2003 Settlement Agreement, and other relief the court orders.

14. There is no respondeat superior doctrine under 42 U.S.C. § 1983.

15. Plaintiff failed to prove that Principal Shannon engaged in a discriminatory practice with malice or deliberate indifference to the rights of a protected individual.

16. Principal Shannon is not liable for compensatory or punitive damages.

17. To establish a violation of Section 504 of the Rehabilitation Act of 1973, a plaintiff must prove that: (1) she is “disabled,” as defined by the Act; (2) she is “otherwise qualified” to participate in school activities; (3) the School District receives federal financial assistance; and (4) she was excluded from participation in, denied the benefits of, or

subjected to discrimination at, the school.

18. Under the Act, a disabled individual is "any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such and impairment." 29 U.S.C. § 706(8)(B).

19. Plaintiff failed to prove by a preponderance of legally sufficient and credible evidence that educational services or benefits were withheld from Shanelle as a result of her disability, that she was excluded from any school activities available to all students or that she was treated differently by School District officials because of her disability.

20. Defendants are entitled to judgment in their favor on Count II of the Amended Complaint for alleged violation of Rehabilitation Act, Section 504.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHELLE REID, on behalf of her daughter, SHANELLE REID, a minor	:	**CIVIL ACTION**
v.	:	
	:	
SCHOOL DISTRICT OF PHILADELPHIA, and	:	
GREGORY SHANNON, PRINCIPAL,	:	
BENJAMIN FRANKLIN ELEMENTARY SCHOOL	:	**NO. 03-1742**

ORDER

AND NOW, this ___ day of August 2004, for the reasons stated in the foregoing memorandum, it is hereby **ORDERED** that:

1. Judgment will be entered in favor of the plaintiff on Count I, and against the School District, in the amount of $10,000. Judgment is in entered in favor of Defendant Gregory Shannon on Count I, the Individuals with Disabilities Education Act..

2. Judgment will be entered in favor of the defendants on Count II, Section 504 of the Rehabilitation Act.

3. Count III, the Fourteenth Amendment Equal Protection claim is **DISMISSED WITH PREJUDICE** as plaintiff cannot prove that Shanelle Reid was treated differently than other similarly situated persons.

4. Count IV, the Fourteenth Amendment Due Process Claim, is **DISMISSED WITH PREJUDICE** as plaintiff cannot prove a lack of due process.

5. Count V, the Americans With Disabilities Act (ADA) is **DISMISSED WITH PREJUDICE** because the ADA extends Section 504 of the Rehabilitation Act to any public entity, regardless of whether it receives federal funds. See Jeremy H. by Hunter v. Mount Leb. Sch. Dist., 95 F.3d 272, 279 (3d Cir. 1996). Since plaintiff was unable to establish a claim under Section 504 of the Rehabilitation Act for failing to prove discrimination, her claim under the ADA also fails.

Norma L. Shapiro, S.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHELLE REID, on behalf of her daughter, SHANELLE REID, a minor	:	**CIVIL ACTION**
v.	:	
	:	
SCHOOL DISTRICT OF PHILADELPHIA, and	:	
GREGORY SHANNON, PRINCIPAL, BENJAMIN FRANKLIN ELEMENTARY SCHOOL	:	**NO. 03-1742**

JUDGMENT ORDER

AND NOW, this ___ day of August, it is hereby **ORDERED** that:

1. Judgment is entered in favor of the plaintiff on Count I, and against the School District, in the amount of $10,000. Judgment is in entered in favor of Defendant Gregory Shannon on Count I.

2. Judgment is entered in favor of the defendants on Count II.

Norma L. Shapiro, S.J.